

# 2009 Current Fiscal Year Report: Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore

Report Run Date: 06/05/2019 07:26:05 PM

<b>1. Department or Agency</b>		<b>2. Fiscal Year</b>	
Department of the Interior		2009	
<b>3. Committee or Subcommittee</b>		<b>3b. GSA Committee No.</b>	
Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore		33736	
<b>4. Is this New During Fiscal Year?</b>	<b>5. Current Charter</b>	<b>6. Expected Renewal Date</b>	<b>7. Expected Term Date</b>
No	01/02/2008		01/02/2010
<b>8a. Was Terminated During Fiscal Year?</b>	<b>8b. Specific Termination Authority</b>	<b>8c. Actual Term Date</b>	
Yes	5 U.S.C. Appendix	01/02/2010	
<b>9. Agency Recommendation for Next Fiscal Year</b>	<b>10a. Legislation Req to Terminate?</b>	<b>10b. Legislation Pending?</b>	
Terminate	No		
<b>11. Establishment Authority</b> Agency Authority			
<b>12. Specific Establishment Authority</b>	<b>13. Effective Date</b>	<b>14. Committee Type</b>	<b>14c. Presidential?</b>
Agency Authority	01/01/2008	Ad hoc	No
<b>15. Description of Committee</b> Regulatory Negotiations Committee			
<b>16a. Total Number of Reports</b>		1	
<b>16b. Report Date</b>	<b>Report Title</b>		
03/30/2009	Final Report of the Negotiated Rulemaking Advisory Committee		
<b>Number of Committee Reports Listed: 1</b>			
<b>17a. Open</b> 5	<b>17b. Closed</b> 0	<b>17c. Partially Closed</b> 0	<b>Other Activities</b> 0
<b>17d. Total</b> 5			

Purpose	Start	End
To assist in the development of special regulations for management of Off-Road Vehicles at Cape Hatteras National Seashore.	11/14/2008	11/15/2008
To assist in the development of special regulations for management of Off-Road Vehicles at Cape Hatteras National Seashore.	12/11/2008	12/12/2008
To assist in the development of special regulations for management of Off-Road Vehicles at Cape Hatteras National Seashore.	01/06/2009	01/07/2009
To assist in the development of special regulations for management of Off-Road Vehicles at Cape Hatteras National Seashore.	02/03/2009	02/03/2009

**Number of Committee Meetings Listed: 5**

	<b>Current FY Next FY</b>	
<b>18a(1). Personnel Pmts to Non-Federal Members</b>	\$0.00	\$0.00
<b>18a(2). Personnel Pmts to Federal Members</b>	\$97,275.00	\$0.00
<b>18a(3). Personnel Pmts to Federal Staff</b>	\$155,513.00	\$0.00
<b>18a(4). Personnel Pmts to Non-Member Consultants</b>	\$122,367.00	\$0.00
<b>18b(1). Travel and Per Diem to Non-Federal Members</b>	\$5,000.00	\$0.00
<b>18b(2). Travel and Per Diem to Federal Members</b>	\$4,364.00	\$0.00
<b>18b(3). Travel and Per Diem to Federal Staff</b>	\$21,229.00	\$0.00
<b>18b(4). Travel and Per Diem to Non-member Consultants</b>	\$38,374.00	\$0.00
<b>18c. Other(rents,user charges, graphics, printing, mail, etc.)</b>	\$103,751.00	\$0.00
<b>18d. Total</b>	\$547,873.00	\$0.00
<b>19. Federal Staff Support Years (FTE)</b>	2.10	0.00

**20a. How does the Committee accomplish its purpose?**

The National Park Service used the negotiated rulemaking process, with a concurrent National Environmental Policy Act (NEPA) process, in an effort to develop a special regulation to manage off-road vehicles (ORV) at Cape Hatteras National Seashore (the Seashore). ORV use at the Seashore is an emotionally-charged issue for various user groups and has increased substantially in recent years. Informal counts on busy holidays and peak season weekends now list as many as 2,200 ORVs on the Seashore's beaches at the same time. Increased ORV use of the Seashore, concern about visitor safety, park resource management issues involving wildlife and vegetation protection, and conflicts among visitor uses have combined to bring the issue of ORV management to the forefront of the Seashore's management concerns. There is the need for the Seashore to develop a plan/Environmental Impact Statement (EIS) and special regulation for Off-road Vehicle (ORV) management. The NPS believed that the process of negotiated rulemaking provided the greatest likelihood of developing regulations that enjoy widespread public acceptance while being consistent with NPS mandates. Since April 30, 2008, NPS has managed ORV use under a Court approved consent decree that will remain in effect until NPS completes its long-term ORV management plan/EIS and regulation. Although the committee did not reach consensus, it played an instrumental role in evaluating ORV management options.

**20b. How does the Committee balance its membership?**

Development of a consensus-based, effective ORV special regulation requires the involvement of representatives of all the affected and interested parties. To achieve this, the NPS provided funding under an Interagency Agreement to the U.S. Institute for

Environmental Conflict Resolution to supervise and contract with a team of neutral facilitators to conduct a feasibility assessment for negotiated rulemaking at the Seashore and to determine the appropriate composition of the committee. The committee was composed of 29 members representing a wide range of interests.

**20c. How frequent and relevant are the Committee Meetings?**

There were five 1- or 2-day meetings held in FY2009. The committee made progress on a variety of elements related to ORV management but did not reach consensus. The meetings were relevant as the agency continues to operate under a Court approved consent decree with a strict deadline for completing the plan and regulation. The committee completed its work in FY 2009. The charter expires Jan. 2, 2010.

**20d. Why can't the advice or information this committee provides be obtained elsewhere?**

The ORV issue had become difficult to manage with current staffing levels and requires a great amount of staff time from many divisions, including the Superintendent's office, Law Enforcement, Resource Management, Maintenance and others. As described above, previous efforts by the NPS to resolve this issue since the 1970's have been unsuccessful and, invariably, the organizations and individuals who are divided over the issue have been distrustful of NPS as much as they are of each other. In January 2006 an interim plan was issued to provide guidance until a long-term plan/EIS and regulation could be completed. A lawsuit was filed in October 2008 that challenged the park's interim plan and resulted in a Court approved settlement (consent decree), which will remain in effect until the long-term plan and regulation are completed. In the negotiated rulemaking process, the interested and affected parties were invited by the agency to participate in a committee to negotiate a consensus on the content of the long-term ORV management plan and proposed regulation.

**20e. Why is it necessary to close and/or partially closed committee meetings?**

n/a

**21. Remarks**

In July 2008, the Department of the Interior Office of Collaborative Action and Dispute Resolution conducted a progress review of the committee through a confidential survey of committee members. Based on member feedback, it was recommended that the committee continue to function for the remaining meetings tentatively scheduled through January 2009. Committee held last two meetings in February 2009 and failed to reach consensus. The committee completed its work in FY 2009. The charter will expire Jan. 2, 2010.

## Designated Federal Officer

Michael B. Murray Superintendent, Cape Hatteras National Seashore

Committee Members	Start	End	Occupation	Member Designation
Allen, David	11/26/2007	11/26/2009	North Carolina Wildlife Resources Commission	Representative Member
Alley, John	11/26/2007	11/26/2009	Outer Banks Preservation Association	Representative Member
Ballance, Eugene	11/26/2007	11/26/2009	Vice President, Ocracoke Preservation Society	Representative Member
Benjamin, Pete	11/26/2007	11/26/2009	U.S. Fish and Wildlife Service	Representative Member
Boucher, Carla	11/26/2007	11/26/2009	United Four Wheel Drive Associations	Representative Member
Bounds, Ronald	11/26/2007	11/26/2009	Recreational Fishing Alliance	Representative Member
Broili, R.	11/26/2007	11/26/2009	National Park Service, Outer Banks Group	Regular Government Employee (RGE) Member
Cahoon, Renee	11/26/2007	11/26/2009	Town of Nags Head	Representative Member
Cameron, Susan	11/26/2007	11/26/2009	North Carolina Wildlife Resources Commission	Representative Member
Carter, Derb	11/26/2007	11/26/2009	Southern Environmental Law Center	Representative Member
Couch, John	11/26/2007	11/26/2009	Outer Banks Preservation Association	Representative Member
Davis, Ricky	11/26/2007	11/26/2009	Carolina Bird Club	Representative Member
Davis, Robert	11/26/2007	11/26/2009	Cape Hatteras Angler Club	Representative Member
Doerr, Patricia	11/26/2007	11/26/2009	American Sportfishing Association	Representative Member
Duke, C. A.	11/26/2007	11/26/2009	Rodanthe-Waves-Salvo Civic Association	Representative Member
Eakes, Bob	11/26/2007	11/26/2009	American Sport Fishing Association	Representative Member
Esham, David	11/26/2007	11/26/2009	Ocracoke Civic and Business Association	Representative Member
Folb, Frank	11/26/2007	11/26/2009	Avon Property Owners Association	Representative Member
Forman, Trip	11/26/2007	11/26/2009	REAL Kiteboarding	Representative Member
Foster, William	01/12/2009	11/26/2009	Civic and Homeowner Associations	Representative Member
Foster, William	11/26/2007	01/11/2009	Commercial Fisherman	Representative Member
Golder, Walker	11/26/2007	11/26/2009	Audubon North Carolina	Representative Member
Goodwin, David	11/26/2007	11/26/2009	Outer Banks Preservation Association	Representative Member
Gould, Burnham	11/26/2007	11/26/2009	Cape Hatteras Recreational Alliance	Representative Member
Hagedon, Sam	11/26/2007	11/26/2009	Outer Banks Chamber of Commerce	Representative Member
Hardham, Larry	11/26/2007	11/26/2009	Cape Hatteras Anglers Club	Representative Member
Hawley, Andrew	11/26/2007	11/26/2009	Defenders of Wildlife	Representative Member
Jarvis, Destry	11/26/2007	11/26/2009	Outdoor Recreation & Park Services, LLC	Representative Member
Jones, Leslie	11/26/2007	11/26/2009	Wilderness Society	Representative Member
Joyner, David	11/26/2007	11/26/2009	N.C. Beach Buggy Association	Representative Member
Judge, Warren	11/26/2007	11/26/2009	Dare County Board of Commissioner	Representative Member
Kayota, Steven	11/26/2007	11/26/2009	Frisco and Hatteras Homeowners Coalition	Representative Member
Keene, Jim	11/26/2007	11/26/2009	N.C. Beach Buggy Association	Representative Member
Leggat, Scott	11/26/2007	11/26/2009	Outer Banks Chamber of Congress	Representative Member
Lyons, Jim	11/26/2007	11/26/2009	Cape Hatteras Recreational Alliance	Representative Member
Maddock, Sidney	11/26/2007	11/26/2009	Audubon North Carolina	Representative Member
Mathis, Wayne	11/26/2007	11/26/2009	North Carolina Division of Marine Fisheries	Representative Member
McCormick, Carolyn	11/26/2007	11/26/2009	Outer Banks Visitors Bureau	Representative Member
Milne, Robert	11/26/2007	11/26/2009	Coalition for National Park Service Retirees	Representative Member
Moore, Raymond	11/26/2007	11/26/2009	Cape Hatteras Birding Club	Representative Member
Murray, Michael	11/26/2007	11/26/2009	National Park Service, Cape Hatteras National Seashore	Regular Government Employee (RGE) Member
Nowlin, Michelle	11/26/2007	11/26/2009	Southern Environmental Law Center	Representative Member
Nuzzo, Matt	11/26/2007	11/26/2009	REAL Kiteboarding	Representative Member
Paquette, Patrick	11/26/2007	11/26/2009	Recreational Fishing Alliance	Representative Member
Peele, Michael	11/26/2007	11/26/2009	Commercial Fisherman	Representative Member
Piner, Lyle	11/26/2007	11/26/2009	United Four Wheel Drive Associations	Representative Member
Rabon, David	11/26/2007	11/26/2009	U.S. Fish and Wildlife Service	Representative Member
Rettie, Dwight	11/26/2007	11/26/2009	Coalition of National Park Service Retirees	Representative Member

Rylander, Jason	11/26/2007	11/26/2009	Defenders of Wildlife	Representative Member
Sanguineti, Vincenzo	11/26/2007	11/26/2009	Hatteras Island Homeowners Coalition	Representative Member
Swartwood, Judy	11/26/2007	11/26/2009	Buxton Beach Motel	Representative Member
Wells, Jeffrey	11/26/2007	11/26/2009	Hatteras Landing Homeowners Association	Representative Member
Weston, Pat	11/26/2007	11/26/2009	Greater Kennakeet Shores Homeowners	Representative Member
Winslow, Sara	11/26/2007	11/26/2009	North Carolina Division of Marine Fisheries	Representative Member
Wrenn, Lee	11/26/2007	11/26/2009	Dare County	Representative Member

**Number of Committee Members Listed: 55**

### Narrative Description

The mission of the National Park Service (NPS) is to conserve park natural and cultural resources while providing for the public enjoyment of the same in a manner that leaves them unimpaired for the enjoyment of future generations. NPS at Cape Hatteras National Seashore has not met longstanding requirements of two executive orders and NPS regulations for managing or legally authorizing off-road vehicle (ORV) use, and there has been corresponding user conflicts and a significant decline in the reproductive success of protected bird and sea turtle species. The committee assisted NPS in an effort to develop an ORV management alternative and regulation that will protect park resources, meet the legal requirements for authorizing ORV use, and resolve a longstanding controversy. In 2008 the issue resulted in litigation and a Court approved settlement (consent decree) that imposed strict deadlines for completion of the ORV management plan and regulation.

### What are the most significant program outcomes associated with this committee?

Checked if Applies

Improvements to health or safety	<input checked="" type="checkbox"/>
Trust in government	<input checked="" type="checkbox"/>
Major policy changes	<input checked="" type="checkbox"/>
Advance in scientific research	<input type="checkbox"/>
Effective grant making	<input type="checkbox"/>
Improved service delivery	<input checked="" type="checkbox"/>
Increased customer satisfaction	<input checked="" type="checkbox"/>
Implementation of laws or regulatory requirements	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

### Outcome Comments

The committee completed its work in FY 2009. The charter expires Jan. 2, 2010.

### What are the cost savings associated with this committee?

Checked if Applies

None	<input type="checkbox"/>
Unable to Determine	<input checked="" type="checkbox"/>
Under \$100,000	<input type="checkbox"/>
\$100,000 - \$500,000	<input type="checkbox"/>
\$500,001 - \$1,000,000	<input type="checkbox"/>
\$1,000,001 - \$5,000,000	<input type="checkbox"/>
\$5,000,001 - \$10,000,000	<input type="checkbox"/>
Over \$10,000,000	<input type="checkbox"/>
Cost Savings Other	<input type="checkbox"/>

### **Cost Savings Comments**

The committee tried to help develop an ORV management alternative and regulation that could be accepted by a diverse range of stakeholders. In theory, this approach should increase the likelihood of broad acceptance of the plan and regulation, and reduce the chances of future litigation by the involved stakeholders. The potential cost savings is through avoidance of the costs of future lawsuit(s).

**What is the approximate Number of recommendations produced by this committee for the life of the committee?**

30

### **Number of Recommendations Comments**

The committee developed numerous informal draft recommendations on specific individual ORV management elements. The committee did not reach a consensus on a comprehensive formal recommendation; however, the committee provided NPS with numerous ORV management options to consider. The committee also made recommendations on committee processes and procedures.

**What is the approximate Percentage of these recommendations that have been or will be Fully implemented by the agency?**

17%

### **% of Recommendations Fully Implemented Comments**

An est. 5 recommendations on committee processes and procedures have been fully implemented.

**What is the approximate Percentage of these recommendations that have been or will be Partially implemented by the agency?**

0%

## **% of Recommendations Partially Implemented Comments**

**Does the agency provide the committee with feedback regarding actions taken to implement recommendations or advice offered?**

Yes ☒ No ☐ Not Applicable ☐

### **Agency Feedback Comments**

Feedback was provided verbally to the committee at meetings and during conference calls, or via email messages to committee members.

**What other actions has the agency taken as a result of the committee's advice or recommendation?**

Checked if Applies

Reorganized Priorities	<input checked="" type="checkbox"/>
Reallocated resources	<input checked="" type="checkbox"/>
Issued new regulation	<input type="checkbox"/>
Proposed legislation	<input type="checkbox"/>
Approved grants or other payments	<input type="checkbox"/>
Other	<input type="checkbox"/>

### **Action Comments**

NPS will eventually issue a proposed rule, based in part on the committee's input.

**Is the Committee engaged in the review of applications for grants?**

No

### **Grant Review Comments**

n/a

**How is access provided to the information for the Committee's documentation?**

Checked if Applies

Contact DFO	<input checked="" type="checkbox"/>
Online Agency Web Site	<input checked="" type="checkbox"/>
Online Committee Web Site	<input type="checkbox"/>
Online GSA FACA Web Site	<input type="checkbox"/>
Publications	<input type="checkbox"/>
Other	<input type="checkbox"/>

**Access Comments**

n/a